



REPORT TO THE PLANNING COMMISSION

AGENDA ITEM NO. VIII-C
COMMISSION MEETING 09/16/09

September 16, 2009

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APPROVED BY

DEPARTMENT DIRECTOR

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SUBJECT: CONSIDERATION OF TEXT AMENDMENT NO. TA-09-03 AND ENVIRONMENTAL FINDING RELATING TO RESTAURANTS WITH ALCOHOL SALES, TAVERNS AND NIGHT CLUBS IN THE ZONING ORDINANCE (THE FRESNO MUNICIPAL CODE)

EXECUTIVE SUMMARY

Over the past several years, the Planning and Development Department has adopted a proactive approach in addressing the known inequities and antiquated requirements that are ingrained in the city's zoning ordinance. The purpose of the Department's latest effort is a proposed text amendment to address recognized deficiencies in the current regulatory scheme for Restaurants serving alcohol, Taverns (i.e., bars, lounges, pubs) and Night Clubs citywide. These deficiencies include:

- Vague and outdated definitions that are difficult to enforce;
- Conflicts between the regulations relating to dancing contained in the Zoning ordinance and those contained in Fresno Municipal Code, Chapter 9, Article 19, Dancing and Entertainment;
- Inconsistent application of informal policies;
- Challenges in implementation, enforcement and compliance by city staff and operators which allows establishments to "morph" into non-permitted uses; and,
- On overall lack of clarity.

This text amendment was derived from studying the application of the current ordinance and various policies and researching other communities. After extensive dialogue and in collaboration with the Fresno Police Department and stakeholders, staff:

- Assessed the existing ordinance;
- Updated how such uses are defined;
- Reclassified where such uses are permitted;
- Consolidated all regulations relating to dancing; and,
- Established objective criteria such as proximity to residences, size of facilities, hours of operation, and the granting authority for future entitlements.

In short, the proposed ordinance accomplishes the following:

- Allows the city to properly condition projects as their most intensive use;

- Creates clear and concise definitions;
- Creates minimum development standards that are easy to read;
- Ensures consistency and predictably while minimizing arbitrary discretion;
- Eliminates the requirement for a dance permit;
- Mandates greater public noticing requirements; and,
- Recognizes existing uses.

The proposed text amendment is supported by staff and has been presented to and endorsed by all six Council District Advisory Committees.

GEOGRAPHIC AREA

Citywide application.

ENVIRONMENTAL FINDING

An environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines. This process included the distribution of requests for comment from other responsible or affected agencies and interested organizations.

The proposed project has been determined to be fully within the scope of MEIR No. 10130 as provided by the CEQA, as codified in the Public Resources Code (PRC) Section 21157.1(d) and the CEQA Guidelines Section 15177(c). It has been further determined that all applicable mitigation measures of MEIR No. 10130 have been applied to the project, together with project specific mitigation measures necessary to assure that the project will not cause significant adverse cumulative impacts, growth inducing impacts and irreversible significant effects beyond those identified by MEIR No. 10130 as provided by CEQA Section 15178(a). Therefore, staff has issued a finding that the project proposal is in conformance to the 2025 Fresno General Plan MEIR No. 10130 dated September 4, 2009, which incorporates a MEIR Mitigation Monitoring Checklist. This environmental finding was published in *The Fresno Bee* on September 4, 2009, commencing a 30-day public review and comment period. To dates, no comments have been received although the public comment period expires on October 5, 2009.

AIRPORT LAND USE COMMISSION ACTION

This text amendment will be considered by the Airport Land Use Commission (ALUC) on October 5, 2009.

BACKGROUND

The existing regulatory scheme has evolved over an extended period of time and has resulted in a fragmented process that requires two permits and often numerous meetings. Staff was proactive because the existing regulations are:

- Difficult to implement by staff;
- Difficult to enforce by the Police Department; and,
- Difficult to understand and comply with by the business community.

This has resulted in the city differentiating amongst land uses by adopting definitions with subtle differences, such as a Restaurant with a bar or cocktail lounge vs. a bar (cocktail lounge) vs. a cocktail lounge in conjunction with and subordinate to a Restaurant, and mandating that all establishments that

serve alcohol obtain a Conditional Use Permit (CUP) (c. 1994). The city then adopted a policy regulating dancing (c. 1996, Policies and Procedures Manual Issue #12, Exhibit 1). This policy grouped dancing into the following four categories:

- Class A, Café Dance
- Class B, (1) Social Dance Class (public dance hall)
- Class B (2) Social Dance
- Class C, Commercial dance

The Planning Division adopted the policy albeit the dance permit process is administered by the Finance Department through the issuance of a dance permit, while the Planning Department regulates where dancing is permitted. More recently, in response to requests for live entertainment (i.e., music and performers), the city adopted the following:

- Director's Classification No. 214 ("Entertainment permitted as an ancillary use within the operation of a restaurant," Exhibit 2);
- As part of Variety Pack #4 adopted the use "Entertainment Venue" which regulates live performances; and,
- Adopted Director's Classification No. DR-08-05 pertaining to the C-R and C-M zone districts (Exhibit 3).

As staff deliberated with how to define these uses, evidenced by the myriad of definitions and regulatory schemes, the city began to implement informal policies that regulated the hours of operation for establishments that sold alcohol for on-site consumption. As a result, a Restaurant in one section of the city may be required to close at midnight while an in kind establishment with similar characteristics (i.e., zoning, proximity to residences, etc.) in a different location may stay open until 2:00 a.m. These inconsistencies often led to lengthy negotiations between applicants, Council District Advisory (CDA) Committees, and the Planning and Police Departments. These lengthy negotiations may also be attributed to vague and outdated definitions along with conflicts between the regulations relating to dancing contained in the Zoning ordinance and those contained in Fresno Municipal Code, Chapter 9, Article 19, Dancing and Entertainment.

PUBLIC PARTICIPATION/OUTREACH

The Department understands that a permanent solution to permit and regulate these uses is a comprehensive overhaul. The proposed ordinance was the result of a plethora of meetings which included a stakeholder group comprised of planning and police department staff, restaurateurs, Night Club operators and promoters, bar owners, and other interested parties. As part of the process, staff presented the proposed text amendment to the following groups:

- Established a stakeholder group which met on:
 - February 4, 2009
 - February 18, 2009
 - March 23, 2009
 - April 10, 2009
- Held a workshop before the Planning Commission on:
 - May 6, 2009

- Held three public information meetings with notices being mailed to approximately 500 Alcoholic Beverage Control (ABC) license holders on:
 - May 27, 2009
 - June 24, 2009
 - August 12, 2009
- Held meetings with the Fresno Chamber of Commerce on:
 - July 6, 2009 (staff)
 - July 8, 2009 (board)
- Met with the Fresno Visitors Bureau staff on July 13, 2009
- Met with the California Restaurant Association staff and board members on August 10, 2009
- Met with the Tower District Merchant's Committee on July 9, 2009
- Met with representatives of the Alcoholic Beverage Control (Fresno office) on numerous occasions.
- Presented and discussed the proposal with the CDA Committees on:
 - District 1 – August 11, 2009
 - District 2 – August 3, 2009
 - District 3 – August 24, 2009
 - District 4 – August 10, 2009
 - District 5 – August 4, 2009
 - District 6 – August 24, 2009

In addition, staff met with individual owners, residents, and provided updates on the city's webpage.

PROPOSED ORDINANCE

Goals

After extensive discussion, an analysis of the current ordinance and various policies and researching other communities, staff's intent is to:

- Protect public welfare and property values;
- Create clear and concise definitions that reflect contemporary practices while also allowing businesses to change to meet their needs;
- Create minimum development standards that are easy to read in a user friendly format;
- Ensure consistency and predictably while minimizing arbitrary discretion;
- Avoid conflicts between regulations relating to dancing; and,
- Establish objective criteria.

Proposed Definitions

To do so, staff drafted new definitions, which are summarized as follows:

Restaurant:	<i>...commercial establishment where during all business hours, food is prepared for and served to the customer, for consumption on or off the premises.... A restaurant may provide entertainment for the customer by performers of the arts (music, dance, comedy, readings, etc.), and differs from a Night Club in that it does not provide floor space for customer dancing and dancing is prohibited. A restaurant differs from a Tavern because it must prepare and serve food at all times during business hours...</i>
Tavern:	<i>....while a Tavern may have facilities for performers of the arts (music, comedy, etc.) for the entertainment of the customer, it differs from a Night Club in that it does not provide floor space for customer dancing. A Tavern differs from a Restaurant in that it is not required to prepare and serve food at all times during business hours.</i>
Night Club:	<i>...a facility that provides a dance floor and live or recorded music for customer dancing, and may or may not provide entertainment, such as live performances of the arts (music, comedy, readings, dance, plays, etc.). A Night Club differs from either a Restaurant or Tavern in that dancing by the customer is permitted. The serving of food or alcoholic beverages is optional.</i>

Regulatory Approach

The proposed regulatory scheme consolidates the uses into three, by zone district, and establishes objective criteria which includes:

- (1) Proximity to residences;
- (2) Gross building area;
- (3) Hours of operation; and,
- (4) The entitlement granting authority (i.e., Director or Planning Commission).

In addition, the focus of the ordinance is to ensure that operators have adequate security. Currently, businesses obtain a CUP for a restaurant however will offer dancing and change their hours of operation without notifying the City or neighbors and often lack proper security. This ordinance is also intended to hold the establishment operator responsible for the effects on the area surrounding their business for calls that can be connected to them, but not holding the operator responsible for calls that cannot reasonably be connected to the operation of the business.

Dance Permits

As noted in the definitions above, dancing would only be permitted in Night Clubs, whereas it has been historically categorized as Café, Social or Commercial Dancing. However, staff is proposing to eliminate the dance permit process and regulate dancing via the CUP process. Given that the city already requires a CUP for the sale of alcohol, dancing may be included in the same application, eliminating the need for duplicate CUP or processes. Moreover, there would be no quarterly fees as currently required.

Overview of Proposed Uses

The following tables provide a side by side comparison highlighting some of the proposed regulations, followed by a synopsis of each. Note that the tables are not intended to be exhaustive rather they are simply intended to highlight the substantive changes.

Restaurant with alcohol sales		
	Existing Regulations	Proposed Changes
<i>Permitted zone districts</i>	Permitted by CUP in most commercial and industrial zone districts	No proposed changes
<i>Size regulations</i>	None unless required by a Community or Specific Plan	No proposed changes
<i>Setback requirements from residential uses</i>	As required by the zone district or the adopted Community Plan and/or Specific Plan, if applicable	No proposed changes
<i>Public noticing requirements</i>	A mailed notice to all property owners within 300 ft. of the property boundaries.	500 ft., plus an 11x17 inch public notice to be posted on site.
<i>Limitations on hours of operation</i>	Determined on a case by case basis, however certain areas of the city are required to close by midnight, while others in similar zone districts may stay open until 2:00 a.m.	12:30 a.m. citywide for the sale, service and consumption of alcohol. Note that a Restaurant with alcohol sales may always request to morph into a Tavern or a Night Club, if permitted
<i>Posting of hours of operation</i>	Not required	Owner will be responsible to conspicuously post the hours of operation for each phase type (i.e., Restaurant, Night Club) near the entrance of the establishment
<i>Dancing regulations</i>	Café Dancing, which requires food sales during all hours and limits the dance floor to 10 percent of the gross floor area. Permitted in the C-1, C-2, C-3 and C-4 zone districts	Not permitted
<i>Granting Authority</i>	Planning Director (subject to a notice of granting)	No proposed changes

Summary of Proposed Changes (Restaurants)

The proposed changes, with the exception of the hours of operation, are minimal. As stated above, there are currently informal policies that require that certain Restaurants close at midnight while others may stay open until 2:00 a.m. By adopting a citywide closing time for Restaurants with alcohol sales, owners and operates, as well as the community will have a clear understanding of the standards. This policy would also allow those wishing to stay open past 12:30 a.m. the opportunity to do so, subject to approval of a CUP for a Tavern or a Night Club. Restaurants wishing to operate past 12:30 a.m. may do so, however they would need to prohibit alcohol sales between the hours of 12:30 a.m. and 6:00 a.m.

Staff is also proposing to increase the public noticing requirements for establishments that offer alcohol for on-site consumption from 300 ft. to 500 ft. and that applicants post the site providing public notice of their pending application or granting of the CUP. This change would provide for greater public participation and a more transparent process.

As noted in the table, café dancing, which is limited to 10 percent of the gross floor area, is currently permitted in the C-1, C-2, C-3 and C-4 zone districts. Staff is proposing to eliminate dancing altogether in the C-1 zone district, while dancing, under the auspices of a Night Club would still be permitted in the C-2, C-3 and C-4 zone districts (see table below for additional details). As noted below, staff is proposing to eliminate all references to percentages of gross floor areas given that once a dance permit is obtained, venues commonly proceed to operate as nightclubs, using substantially more than the limit of 10 percent of the gross square footage for dancing. Stopping this circumvention of the dance permit is difficult under the

current regulatory scheme because it requires, among other things, the police officers responding to a call for service to make an on the spot determination of whether the establishment is operating as a Restaurants, as currently defined, and whether the dance floor is larger than what is permitted under the dance permit.

Taverns		
	Existing Regulations	Proposed Changes
<i>Permitted zone districts</i>	Permitted by CUP in most commercial and industrial zone districts, however they are not permitted in the C-P or C-1 zone districts	Would also be a permitted use in the C-P and C-1 zone districts subject to a CUP
<i>Size regulations</i>	None unless required by a Community or Specific Plan	Yes depending on the zone district and proximity to residences
<i>Setback requirements from residential uses</i>	As required by the zone district or the adopted Community Plan and/or Specific Plan, if applicable	Yes depending on the zone district and proximity to residences. For example, if a Tavern is proposed in the C-6 zone district and was less than 50 ft. from a residence, the application would be referred to the Planning Commission for consideration whereas if the setback exceeded 50 ft., the project would be reviewed by the Planning Director
<i>Public noticing requirements</i>	A mailed notice to all property owners within 300 ft. of the property boundaries	500 ft., plus an 11x17 inch public notice to be posted on site
<i>Limitations on hours of operation</i>	Determined on a case by case basis, however certain areas of the city are required to close by midnight, while others in similar zone districts may stay open until 2:00 a.m.	May stay open until 2:00 a.m., however would be required to close earlier than 2:00 a.m. in the C-P and C-1 zone districts
<i>Posting of hours of operation</i>	Not required	Owner will be responsible to conspicuously post the hours of operation for each phase type (i.e., Restaurants, nightclub) near the entrance of the establishment
<i>Dancing regulations</i>	Café Dancing, which requires food sales during all hours and limits the dance floor to 10 percent of the gross floor area. Permitted in the C-1, C-2, C-3 and C-4 zone districts	Not permitted
<i>Granting Authority</i>	Planning Director (subject to a notice of granting)	Director and in some cases the Planning Commission depending on the size of the establishment or proximity to residences

Summary of proposed changes (Taverns)

Staff is proposing to expand Taverns in the C-P and C-1 zone districts which have historically prohibited such use. This change would provide greater flexibility for entrepreneurs seeking to establish neighborhood bars that are relatively small and in neighborhood commercial areas which are in close proximity to residences.

Taverns would be allowed to stay open until 2:00 a.m. in most cases subject to approval of a security plan. One additional notable change is that certain entitlements would be referred to the Planning Commission for consideration whereas the city has historically delegated authority to the Planning Department Director.

Night Clubs*		
<i>(*Night Clubs are not defined in the FMC, rather applicants obtain a café or commercial dance permit)</i>		
	Existing Regulations	Proposed Changes
<i>Permitted zone districts</i>	All alcohol sales require a CUP, however dance permits are issued by right as follows: Café Dancing: C-1, C-2, C-3 and C-4 Commercial Dancing: C-3, C-4, C-6 and by CUP in the C-R and C-M (downtown only)	Would be permitted in the C-P (in a hotel only), C-2, C-3, C-4, C-5 (designated area in the Tower District only), C-6, C-R, and in the C-M, M-1 and CC in the downtown area
<i>Size regulations</i>	None unless required by a Community or Specific Plan	Yes depending on the zone district and proximity to residences
<i>Setback requirements from residential uses</i>	As required by the zone district or the adopted Community Plan and/or Specific Plan, if applicable	Yes depending on the zone district and proximity to residences. For example, if a Night Club is proposed in the C-3 zone district and was less than 500 ft. from a residence, the application would be referred to the Planning Commission for consideration, whereas if the setback exceeded 500 ft., the project would be reviewed by the Planning Director
<i>Public noticing requirements</i>	Not required for a dance permit, although if alcohol is proposed a notice would be mailed to property owners within 300 ft.	500 ft., plus an 11x17 inch public notice to be posted on site
<i>Limitations on hours of operation</i>	Determined on a case by case basis, however certain areas of the city are required to close by midnight, while others in similar zone districts may stay open until 2:00 a.m.	May stay open until 2:00 a.m., unless located in the downtown area south of Divisadero it may stay open until 4:00 a.m. (alcohol sales must still cease at 2:00 a.m.)
<i>Posting of hours of operation</i>	Not required	Owner will be responsible to conspicuously post the hours of operation for each phase type (i.e., Restaurants, nightclub) near the entrance of the establishment
<i>Dancing regulations</i>	Under 18: midnight 21 and over: 2:00 am, unless you gain special approval to stay open until 4:00 am	Under 18: midnight Under the age of 21: 1: 00 am 21 and over: 2:00 am, unless located in the downtown area south of Divisadero it may stay open until 4:00 am (alcohol sales must still cease at 2:00 am)
<i>Granting Authority</i>	Planning Director for an alcohol CUP, however the dance permit is approved by Planning staff which is administered by the Finance Department	Director and in some cases the Planning Commission depending on the size of the establishment or proximity to residences

Summary of proposed changes (Night Clubs)

Currently, the city lacks a definition for Night Clubs and relies on the café or commercial dancing regulatory process to regulate dancing. Because of no clearly defined process for Night Clubs there are discrepancies in their approval process which is supported by the varying closure times across the city. Rather than attempting to regulate percentages of floor areas for dancing, staff is proposing to limit building

areas which would limit the number of patrons. This is in an effort to limit the impacts on residential neighborhoods and potential police calls for service. By basing the regulation primarily upon gross square footage and hours of operation, the Fresno Police Department can determine if the establishment is violating these regulations. It is also anticipated that these proposed changes will ensure consistency and predictability while minimizing arbitrary discretion (i.e., closure times) while encouraging public participation by notifying neighbors rather than the current process which does not require a CUP or public notice.

It is also noted that the proposal would allow nonprofit organizations the opportunity to hold up to 10 events per year, whereas they are currently required to obtain successive single event dance permits.

MULTIPLE USES

The proposed ordinance contains language that would allow businesses to morph into other uses without obtaining separate permits for each proposed use. For example, a Restaurants in the C-2 zone district is required to stop the sale and service of alcohol at 12:30 a.m., however as part of their application, they can request to become a Tavern on Sunday through Thursday, while they may operate as a Night Club on Friday and Saturday nights. As part of this proposal, staff is not proposing any modification to the Master Fee Schedule rather an applicant would simply need to complete the proper application while the entitlement would be processed by whichever the most intensive use is proposed. In the example above, the entitlement would be considered by the Planning Commission and it is likely that the applicant would need to hold a neighborhood meeting prior to submitting their application.

MODIFICATIONS TO PARKING STANDARDS

As part of its review, staff is also proposing modifications to the existing parking standards which are summarized in the following table with a summary below.

Parking Standards		
	Existing Regulations	Proposed Changes
<i>Required Parking for Restaurants:</i>	Having 4,000 sq. ft. or less: 1 per each 100 sq. ft. Having more than 4,000 sq. ft.: 40 spaces, plus 1 for each 50 ft. in excess of 4,000 sq. ft.	Having 4,000 sq. ft. or less: 1 per each 125 sq. ft. Having more than 4,000 sq. ft.: 32 spaces, plus 1 for each 75 ft. in excess of 4,000 sq. ft.
<i>Example:</i>	If a Restaurant is 5,000 sq. ft. in area it would need to provide 60 parking spaces	If a Restaurant is 5,000 sq. ft. in area it would need to provide 46 parking spaces
<i>Required parking for nightclubs:</i>	Not a defined use.	1 space per every 75 sq. ft. of gross building area.
<i>Downtown Fresno:</i>	Underlying zone district, plus 2 parking exempt parking areas	Underlying zone district, 2 parking exempt parking areas, plus, businesses would only need to provide 25 percent of the required parking as required above, but no more than 75 percent

Summary of proposed changes (Parking)

Staff is recommending reducing the number of required parking spaces which will help facilitate the use of vacant buildings or infill parcels that may be unable to meet the required parking standards. Moreover, staff is proposing to greatly reduce the required number of parking spaces in the downtown area. Given that many parcels in the downtown area are in close proximity to community parking facilities staff will place a maximum number of parking stalls allowed to be included on these sites.

IMPACTS TO EXISTING BUSINESSES

The proposed ordinance will acknowledge existing businesses that may not be operating in accordance with the proposed ordinance changes. These existing businesses that do not conform with the proposed regulations would be considered nonconforming and would be permitted to continue to operate subject to compliance with the regulations placed on their establishment at the time they obtained their permit. Existing businesses which would be classified as nonconforming would only be required to comply with the new ordinance if any one of the following conditions is met:

1. They close one continuous year;
2. They change their operation, e.g., from Restaurant to a Night Club or if a single use would like to establish multiple uses;
3. They propose to increase the floor area (including patio area);
4. They request to close at a later time; or,
5. They change their license type for the sale of alcoholic beverages (ABC License: i.e., from type 41 to type 47).

It is noted that an owner/operator of a nonconforming Restaurant, Tavern, or Night Club may sell and/or transfer their permit to another entity, but in no case shall these nonconforming uses be relocated to another location.

ORDINANCE OUTLINE

Whenever there is a proposal to amend the text of the Zoning Ordinance, it is never a simple matter. Typically, many related sections of the Zoning Ordinance must be evaluated for potential impacts of a proposed change. Sometimes the organization of the draft text amendment seems to become chaotic. The following is a summary of the topics whose language and organization is being streamlined, simplified and fine-tuned. Section numbers are listed through the body of the text amendment as a reference. Also note that the organization of the draft ordinance is in Section numeric order as is the Zoning Ordinance itself.

Section 1:	Reference to the existing Dance Permit process
Sections 2 through 48:	Modifications to the zoning ordinance and adding land uses in districts that historically prohibited such uses
Section 49:	Reflects addition of Sections 12-326 (Restaurants with alcohol sales, Taverns, and Night Clubs) and 12-327 (Dancing)
Section 50:	Proposed changes to the parking standards
Section 51:	Eliminates "Cocktail Lounge-Restaurant" regulations
Section 52:	Eliminate "Café Dancing" regulations
Section 53:	Addition of Section 12-326, Restaurants with alcohol sales, Taverns, and Night Clubs
Section 54:	Addition of Section 12-327, Dancing

COMMENTS

Upon completion of the draft ordinance, it was distributed to numerous offices, agencies, staff and the various CDA Committees requesting comments and recommendations. Response was limited. The majority of comments were discussed orally during staff's presentation to each CDA Committee. Most comments revolved around noise and ensuring that each committee would still have an opportunity to provide comments.

Comments from community members have also been limited however this may be partially attributed to outreach from staff.

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. RECOMMEND that Council approve the Environmental Document prepared for this project.
2. RECOMMEND that Council approve Text Amendment No. TA-09-03 as proposed in the attached Draft Ordinance.

Attachments: Exhibit 1, Policies and Procedures Manual Issue #12
Exhibit 2, Director's Classification No. 214, Entertainment permitted as an ancillary use within the operation of a restaurant
Exhibit 3, Adopted Director's Classification No. DR-08-05 pertaining to the C-R and C-M zone districts
Draft Ordinance
Environmental Assessment No. TA-09-03, dated September 4, 2009

CITY OF FRESNO
DEVELOPMENT DEPARTMENT

Policies & Procedures

ZONING REQUIREMENTS FOR BUSINESS TAX CERTIFICATES

ISSUE NO. 12

TITLE: DANCE PERMITS

DATE: MAY 15, 1996

STATEMENT:

With this issue, the Department establishes the criteria by which Public Dance Halls and Cafe Dancing will be evaluated as a use. The determination as to the extent of the use, and type of review conducted is necessary for the zoning review of applications for a business permit.

REFERENCES:

Fresno Municipal Code:

Section 12-217.1-B-7.5. The C-1 Zone district lists "*Cafe dancing*" as a use permitted by right. By reference therefore, cafe dancing is also permitted by right in the C-2, C-3, and C-4 Zone Districts.

Section 12-408-E. By Director's Classification No. 98, "*Public Dance Hall*" is a permitted use by right in the C-3, C-4, C-6, and C-R Zone Districts.

Section 12-105-C-1.5. Defines "*CAFE DANCING*" in the following manner:

...shall mean any dancing in a restaurant open to the general public, but only where such dancing involves the active participation of patrons of the establishment and no exhibitions or performances by entertainers. The requirements of Section 12-306-N-29 shall apply.

Section 12-306-N-29 sets the special standards for cafe dancing. See page 4 for full quote of section.

Article 3 of Chapter 7 (Dancing and Entertainment), set forth the rules and regulations governing Dance permits.

Section 7-301 defines "public dance". See page 5 for full quote of section.

Section 7-313 classifies four classes of dance. See pages 5 and 6 for full quote of section.

Development Department Policy:

A formal written policy has not been published to date. The Department now formalizes such a policy to better utilize our resources and provide a consistent application of these standards.

PROCEDURES:

The need for this policy arises from the requirement for a zoning evaluation of dance permit applications sent to this Department by the Business Tax Section.

In cooperation between Departments, the following discussion will establish a consistent review and evaluation of these requests; whether or not, and how, they are permitted in the zone district in which they are located.

THE REVIEW OF DANCE PERMITS SHALL BE COMPLETED WITHIN TWO WORKING DAYS AFTER RECEIPT.

Upon receipt from the Business Tax Section, the analyst will review Dance permits and act according to the answers of the following questions gleaned from the information on the application form for a business permit:

1. What CLASS of dance permit is this application?
 - a. CLASS A: Cafe Dances
 - (1) APPROVE; if the zoning for the subject site is C-1, C-2, C-3 or C-4.
 - (2) APPROVE; if the zoning for the subject site is other than C-1, C-2, C-3, or C-4 and this is a renewal application. The use shall be considered as nonconforming.
 - (3) DENY; if the zoning for the subject site is other than C-1, C-2, C-3 or C-4 and this is a first time permit application.
 - b. CLASS B(1): Social Dances (public dance hall)
 - (1) APPROVE; if the organization conducting the dance is permitted in the zone district of the subject site: i.e., social, fraternal, religious, or charitable organizations.
 - (2) APPROVE; if the organization conducting the dance (social, fraternal, religious, or charitable organization) is determined to be nonconforming, and this is a renewal permit.
 - (3) DENY; if the organization conducting the dance (social, fraternal, religious or charitable organization) has been established as illegal in the zone district of the subject site.
 - (4) DENY; if the organization conducting the dance is not a social, fraternal, religious, or charitable organization, and the permit is a first time request.

c. CLASS B(2): Social Dances (public dance hall)

- (1) APPROVE; if the dance is conducted by a school or student group, on school grounds.
- (2) APPROVE; if the dance is conducted by a school or student group, not on school grounds and the facility in which the dance is being conducted is permitted in the zone district of the dance site. Place the following note on the application form.

PROVIDE ADEQUATE PARKING FOR THE DANCE

- (3) DENY; if the dance is not conducted by a school or student group.

d. CLASS C: Commercial Dances (public dance hall)

- (1) APPROVE; if the zone district of the subject site is C-3, C-4, C-6, or C-R.
- (2) APPROVE; if the zone district of the subject site is other than C-3, C-4, C-6, or C-R, and this is a renewal application. The use will be considered nonconforming.
- (3) DENY; if the zone district of the subject site is other than C-3, C-4, C-6, or C-R, and this application is a first time request.

If there is any question as to the validity of the application, or if some of the facts just don't jibe, ask your peers or supervisor or contact the Business Tax Section (Leon Molina).

USE COMMON SENSE!!!

When you complete the review and either approved or denied the application, route the permit application back to the Business Tax Section.

FINIS

Fresno Municipal Code References

Section 12-306-N-29 sets the special standards as follows:

Cafe Dancing. Whenever property in the C-1 District is proposed to be used for cafe dancing, the following shall apply:

- a. That area to be used for dancing shall be designed and operated as an integrated part of the restaurant in which it is located and shall not occupy more than ten percent of the gross floor area thereof.
- b. The area used for dancing shall be entered only from within the restaurant, with no outside entrance to the dancing area except for emergency use only.
- c. Dancing shall occur only during the hours that the restaurant is open for the business of preparing and serving food and drink to patrons from a regular menu.
- d. Dancing shall not be advertised outdoors except in conjunction with the restaurant.
- e. The owner or operator of the restaurant shall obtain and maintain at all times a valid dance permit from the city controller pursuant to Article 3 of Chapter 7 of this Code. Application for the dance permit shall be reviewed and approved by both the Police Department and the Fire Department to insure protection of the health, safety and welfare of the restaurant patrons, the surrounding properties and neighboring businesses and residents.
- f. The operation of the restaurant shall comply with all provisions of the Noise Ordinance of the City of Fresno (Article 3 of Chapter 8 of this Code), including all amendments thereto.
- g. Additional off-street parking shall be provided for the restaurant as follows: For the area of the restaurant designated for dancing, there shall be one parking space for each ten square feet of floor area. This requirement shall not apply to restaurants in which dancing is permitted only after 9:00 p.m.
- h. Failure to comply with any of the provisions of this subsection shall be grounds for the revocation of the dance permit, as provided for in Article 3 of Chapter 7 of this Code.

Fresno Municipal Code References (cont)

SECTION 7-301. DEFINITIONS. The term "public dance," as used in this Code, shall mean any dance to which the public generally may gain admission with or without the payment of a fee, or which is given or conducted in connection with the sale of food or drink in restaurants, cafes or hotel dining rooms or other eating or drinking places to which the general public is admitted, or which is run or conducted for profit or given or conducted in connection with the provision of other amusement or entertainment for profit. The term "public dance hall," as used here, shall mean a room, place or space in which a public dance shall be held.

SECTION 7-313. RULES REGULATING ISSUANCE OF PERMITS.

- (a) Upon the filing of an application for a permit, the Controller shall immediately transmit a copy to the Police Chief who shall cause an investigation to be made and report his findings and recommendations in writing to the Controller within thirty days from the date of filing of the application.
- (b) The Controller, upon the basis of his own investigation and the report and recommendations of the Police Chief, shall approve, approve with conditions, or deny each application for a permit.
- (c) The Controller shall deny an application for a permit if he finds any of the following:
 - (1) The applicant or person to be in charge of the dance or dance hall is not a person of good moral character.
 - (2) The provisions of this article pertaining to the dance or dance hall will not be met.
 - (3) The conducting of the dance or dance hall will create a public nuisance or disorder in the neighborhood, or the premises are not sufficiently soundproof so that nearby residents or patrons of nearby hotels or lodging houses will not be disturbed, or the floor area in which the dance will be conducted is not reasonably brightly lighted.
- (d) No application for a permit shall be processed until the application and permit fee has been paid to the Controller.
- (e) Notice of approval of a public dance hall permit or public dance permit, and which allows public dances on the premises after the hour of 2:00 o'clock a. m., shall be mailed by first class mail to every person whose name and address appears on the last equalized County Assessment Roll as the owner of any property within three hundred feet of the exterior boundaries of the property on which the public dance will be conducted. Within fifteen days of the date of mailing such notice, any person may appeal the decision of the Controller to the Chief Administrative Officer pursuant to the provisions of Chapter 1, Article 4 of this code. If no appeal is filed within the time prescribed, the action of the Controller shall be final.

Fresno Municipal Code References (cont)

(f) An applicant aggrieved by the action of the Controller may appeal to the Chief Administrative Officer in accordance with the provisions of Chapter 1, Article 4, of this code. In the event the applicant appeals the decision of the Controller to prohibit the public dance after the hour of 2:00 o'clock a.m., notice shall be provided pursuant to the provisions of subsection (e) above. If no appeal is filed within the time prescribed, the action of the Controller shall be final.

(g) Public dances shall be classified as follows:

(1) CLASS A---Cafe Dances: Cafe dances shall include any dancing in a restaurant, cafe or hotel dining room, or other eating place open to the general public or conducted for profit. No Class A permit shall be issued unless the applicant therefor holds either a valid hotel or restaurant license.

(2) CLASS B(1)---Social Dances: Dances conducted by social, fraternal, religious or charitable organizations where such dances are not open to the general public.

(3) CLASS B(2)---Social Dances: Dances conducted by schools or student groups.

(4) CLASS C---Commercial Dances: Dances other than those covered by Classes A, B(1) and B(2) hereunder.

(h) The duration of permits for public dances and public dance halls shall be for such periods approved by the Controller and shall not exceed one year. The fees for public dances and public dance halls shall be as designated in the Master Fee Resolution.

Exhibit 2, Director's Classification No. 214, Entertainment permitted as an
ancillary use within the operation of a restaurant
(to be repealed)

#214


City of



MEMORANDUM

DATE: March 7, 2007

TO: KEITH BERGTHOLD, Acting Director
Planning and Development Department

FROM:  DAVID A. STIGLICH, Project Manager
Planning Division

SUBJECT: DIRECTOR CLASSIFICATION NO. 214 TO ALLOW ENTERTAINMENT AS AN
ANCILLARY USE WITHIN THE OPERATION OF A RESTAURANT

DIRECTOR ACTION

The Director hereby approves Director Classification No. 214 as follows:

Title: "Entertainment permitted as an ancillary use within the operation of a restaurant."

Zone Districts: Permitted wherever a restaurant is permitted.

Criteria: Restaurants shall be allowed (by right) to have entertainment for the enjoyment of their patrons. This entertainment may consist of live or recorded music, and dancing and shall:

1. Not be provided or performed by the patrons;
2. Be performed within the restaurant and/or approved outdoor patio area provided the entertainment in the outdoor patio area is not amplified;
3. Not consist of adult entertainment as defined by the Fresno Municipal Code;
4. Be subject to the City of Fresno Noise Ordinance;
5. Be subject to Building and Fire Code requirements;
6. Be incidental and subordinate to the restaurant use;
7. Be permitted only when the restaurant is in use and serving meals;
8. Not require a separate, or cover, charge by the operator;
9. Be provided only by the owner/operator of the restaurant;
10. Not be used for the sale or promotion of any product;
11. If there is an indoor or outdoor expansion to the customer seating area of the restaurant, it shall be subject to the approval of a Special Permit (Site Plan Review or Conditional Use Permit).


Keith Bergthold, Acting Director,
Planning and Development Department

3-19-07
date

BACKGROUND INFORMATION

This Director Classification has been requested to provide guidelines for restaurant operators who inquire about their ability to provide entertainment for their customers. Currently, the Zoning Ordinance is silent regarding entertainment in restaurants. This paper will afford the reader the necessary information to pursue their wishes to provide live entertainment for customers of restaurants.

ANALYSIS

The purpose of this Director Classification is to establish guidelines to provide for live entertainment as part of a restaurant operation. In actuality, this Classification adds "entertainment" as a secondary, or ancillary use to the primary use of land; a restaurant. As a result, the Zoning Ordinance will not list this use in any zone district as a stand-alone use of land, rather the reader is made aware that there are provisions to provide entertainment as part of the operation of a restaurant.

In September of 2006, Director Nick Yovino, signed a Department of Planning and Development Policy Memo establishing a set of criteria for permitting live entertainment in a restaurant. Subsequently, it was modified in December of 2006, and further discussions determined that it would be more appropriate and lend more credence to the criteria if it were in the form of a Director's Classification. As a result of those discussions, direction was given to create this Director Classification. Staff supports this Director Classification and recommends it be approved.

PROCESS

Section 12-408 of the Fresno Municipal Code (FMC), enables the Director, subject to certain standards and findings, to add a use to a zone district, either by right or subject to a conditional use permit.

The first step in this procedure is to examine the classification of the use. Section 12-408-B states: "The Director may classify such use as a permitted use, or as a permitted use subject to Conditional Use Permit. In no instance shall the Director determine that a use be permitted in a district when such use is specifically listed as first permissible in a less restricted district." A listing of the districts, from most restrictive to least restrictive is found in Section 12-317-B-1-c (FMC).

In this somewhat unusual case, the proposed use, "Entertainment permitted as an ancillary use within the operation of a restaurant" is actually an ancillary use to the primary use of land; a restaurant. As stated earlier, this Director Classification will not result in listing of this ancillary use in any zone district as a stand-alone use of land, rather it becomes part of the primary land use; a Restaurant. Restaurants are already a listed use in many districts, by right in some and requiring a conditions use permit in others. As such, it becomes unnecessary to make the findings of Section 12-408-C of the Zoning Ordinance.

Based upon the description and discussion of the proposal above, the following are proposed:

Title: "Live Entertainment as part of a Restaurant Operation".

Zone District(s): Permitted as part of a restaurant in any district where a restaurant is permitted.

Criteria: Restaurants shall be allowed (by right) to have entertainment for the enjoyment of their patrons. This entertainment may consist of live or recorded music and dancing and shall:

1. Not be provided or performed by the patrons;
2. Be performed within the restaurant on approved patio area provided the entertainment in the patio area is not amplified;

3. Not consist of adult entertainment as defined by the Fresno Municipal Code;
4. Be subject to the City of Fresno Noise Ordinance;
5. Be subject to Building and Fire Code requirements;
6. Be incidental and subordinate to the restaurant use;
7. Be permitted only when the restaurant is in use and serving meals;
8. Not require a separate, or cover, charge;
9. Be provided only by the owner/operator of the restaurant;
10. Not be used for the sale or promotion of any product
11. If there is an expansion to the customer seating area of the restaurant, it shall be subject to the approval of a Special Permit (Site Plan Review or Conditional Use Permit).

As a result of the analysis of this request, staff recommends that this secondary use be added to and become part of the operation of the primary use; a Restaurant.

FINDINGS

The second step in this process is to make the required findings in accordance with Section 12-408-C of the Fresno Municipal Code. Based upon the title, description and conditions listed above, the findings listed below have already been met because the primary use as a restaurant is already a use listed in the Zoning Ordinance, and, as stated above, this Director Classification is not adding any use to any zone district. The Findings are incorporated for reference purposes only:

1. *That the subject use and its operation are compatible with the uses permitted in the district where it is proposed to be allowed;*
2. *That the subject use is similar to two or more uses permitted in the district within which it is proposed to be allowed;*
3. *That the subject use will not cause substantial injury to the value of the property in neighborhoods or districts within which it is likely to be located;*
4. *That the subject use will be so controlled that the public health, safety, and general welfare will be protected.*

CONCLUSION

Based upon the discussion above, staff supports this Director Classification as proposed.

RECOMMENDATION

Staff recommends that the Director approve this Classification

Exhibit 3, Adopted Director's Classification No. DR-08-05 pertaining to the C-R and C-M zone districts
(to be repealed)

08-05



MEMORANDUM

DATE: October 20, 2008

TO: KEITH BERGTHOLD, Interim Director
Planning and Development Department

FROM: DAVID A. STIGLICH, Project Manager
Planning Division

SUBJECT: DIRECTOR CLASSIFICATION NO. DR-08-05 TO ALLOW AN
ENTERTAINMENT VENUE AS DESCRIBED IN THE ZONING ORDINANCE AS
A USE WITHIN THE C-R AND C-M ZONE DISTRICTS

DIRECTOR ACTION

The Director hereby approves Director Classification No. DR-08-05 as follows:

Title: "Entertainment Venue".

Zone District(s): Permit in the C-R and C-M Zone Districts, subject to a conditional use permit.

Criteria: If dancing is a function of the operation of an Entertainment Venue, the operator shall obtain a Commercial Dance Permit, and comply with any and all conditions applied therewith.


Keith Bergthold, Interim Director,
Planning and Development Department

10-24-2008
date

BACKGROUND INFORMATION

The Department is in receipt of a letter and payment of fees, from Ms. Cheryl Rowe, representing "Rowes Icehouse", a Nightclub and Lounge, asking for a classification of their proposed use, at 764 "P" Street. This location is Zoned C-M (Commercial and Light Manufacturing). In their letter dated August 23, 2008, Ms. Rowe asks that the Director approve a Commercial Dance Permit for this location. Based on the understanding of Ms. Rowe's proposal as described in the operational statement submitted, this Director Classification is for the purpose of adding the use, "Entertainment Venue" to the C-M District. In addition, staff is taking this opportunity to expand the original request by adding it to the C-R (Commercial Recreation) District.

ANALYSIS

The operational statement submitted by the requestor, described a use that fits nicely into the category of the recently adopted definition of an Entertainment Venue. This definition was adopted as part of Text Amendment No. TA-07-03, known as Variety Pak #4; however it was not added to any Zone District.

The Use as proposed, does not match that of a "Bar", or "Tavern", as already established in the Zoning Ordinance, nor does it match that of a "Restaurant, serving alcohol. As the applicant states: "Our primary focus is to become an entertainment venue only, not a restaurant." As mentioned above, the use, "Entertainment Venue" is a definition, but was never listed as a use in any Zone District. Therefore it is appropriate to consider adding it as a use to any Zone District, via this procedure; a Director Classification.

Dancing will be a major component of an Entertainment Venue. There are only two listings for dancing as a use within the Zoning Ordinance. One is Café Dancing, which by definition is only permitted as an ancillary use with a restaurant, and the other is a Dance Hall, where dancing is the primary function of the land use. The definition of an Entertainment Venue was crafted to address uses where dancing may be the primary function, with or without food service. As a result, a commercial dance permit is the appropriate dance permit required whenever dancing is function of the operation of an Entertainment Venue.

As a note of clarification, Staff is in the process of re-evaluating the definitions and classifications of such uses as restaurants, bars, cocktail lounges, taverns, entertainment venues, etc., and including dance permits. In the near future, the Department will be initiating a text amendment addressing these items. Because of the timing of this request, and that this current proposal meets the current definition of an Entertainment Venue, staff supports this request.

PROCESS

Section 12-408 of the Fresno Municipal Code (FMC), enables the Director, subject to certain standards and findings, to add a use to a zone district, either by right or subject to a conditional use permit.

The first step in this procedure is to examine the classification of the use. Section 12-408-B states: "The Director may classify such use as a permitted use, or as a permitted use subject to Conditional Use Permit. In no instance shall the Director determine that a use be permitted in a district when such use is specifically listed as first permissible in a less restricted district." A listing of the districts, from most restrictive to least restrictive is found in Section 12-317-B-1-c (FMC).

In this case, the proposed use, "Entertainment Venue" is not specifically listed in any zoned district. Therefore the Director may act upon this request, if found appropriate.

Based upon the description and discussion of the proposal above, the following are proposed:

- | | |
|--------------------------|---|
| <u>Title:</u> | "Entertainment Venue". |
| <u>Zone District(s):</u> | Permitted in the C-R and C-M Zone Districts, subject to a conditional use permit. |
| <u>Criteria:</u> | If dancing is a function of the operation of an Entertainment Venue, the operator shall obtain a Commercial Dance Permit, and comply with any and all conditions applied therewith. |

FINDINGS

The second step in this process is to make the required findings in accordance with Section 12-408-C of the Fresno Municipal Code:

1. *That the subject use and its operation are compatible with the uses permitted in the district where it is proposed to be allowed;*

The proposed Districts, in which this use is proposed, permit a variety of uses consisting of commercial recreational and heavy commercial uses and light industrial uses. An Entertainment Venue fits naturally into the C-R (Commercial Recreational District), and is a commercial land use that normally exerts a greater demand upon the site than most commercial uses, and therefore would nicely fit into the C-M District.

2. *That the subject use is similar to two or more uses permitted in the district within which it is proposed to be allowed;*

This use would be similar to a restaurant, meeting halls, and the variety of schools that are permitted in these Districts. These uses serve a large number of patrons, at once, over a period of time.

3. *That the subject use will not cause substantial injury to the value of the property in neighborhoods or districts within which it is likely to be located;*

The inclusion of an Entertainment Venue in the C-R and C-M Zone Districts will not cause injury to the value of surrounding area. Commonly, a popular commercial use positively impacts neighboring properties.

4. *That the subject use will be so controlled that the public health, safety, and general welfare will be protected.*

This use will require the submission and approval of a conditional use permit, which may include conditions that may be monitored and enforced to comply with requirements to protect the public health, safety and welfare.

CONCLUSION

Based upon the discussion above, staff supports this Director Classification as proposed.

RECOMMENDATION

Staff recommends that the Director approve this Classification.